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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,737	09/09/2003	Amanda B. Mitchell	9538.18395-PROV FOR	3374

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT PAPER NUMBER

1772

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,737

Applicant(s)

MITCHELL ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Withdrawn Rejections

1. The 35 U.S.C. 102(b) rejection of claims 1 – 4, 7 – 11 and 14 as anticipated by Taylor in the paper dated March 8, 2005 is withdrawn due to Applicant's amendments in the paper dated June 10, 2005.

2. The 35 U.S.C. 103(a) rejection of claims 5, 12 and 13 over Taylor in view of Huang in the paper dated March 8, 2005 is withdrawn due to Applicant's amendments in the paper dated June 10, 2005.

3. The 35 U.S.C. 103(a) rejection of claim 6 over Taylor in view of Huyck in the paper dated March 8, 2005 is withdrawn due to Applicant's amendments in the paper dated June 10, 2005.

New Rejections

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1 – 4, 7 – 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Huang.

Taylor discloses a fabric securing system for securing a first piece of fabric relative to a second piece of fabric (Column 1, lines 8 – 10). The system comprises a strip of flexible material having a first side, a second side and a perimeter having predetermined configuration (Column 1, 43 – 44; Figure 2, #30), wherein the first side has at least portion thereof coated with an adhesive material (Column 3, lines 13 – 17; Figure 2, #34) and a channel, or non-adhesive tabular are integrally formed with said strip, formed by the strip and second piece of fabric with the first piece of fabric secured within the channel (Figure 2, #33; Figure 1, #10, 20 and 30) as stated in claims 1 and 9. With regard to claim 2, the first side of the flexible strip further comprises a first section forming an adhesive section (Figure 2, #31 and 34), a second section integrally formed between the first and second sections that forms a channel with second piece of fabric (Figure 2, #33; Figure 1, #10, 20 and 30) and a third section forming an adhesive section (Figure 2, #32 and 35). The first and third sections of the strip are adhesively connected to said second piece of fabric (Figure 1), wherein said first piece of fabric is slidingly secured with said channel (Figure 1, #20) as stated in claim 3. Regarding claims 4 and 8, the channel, or second section, is non-adhesive, non-coated section (Figure 2, #33; Column 1, lines 53 – 56). The securing system further comprises a removable backing material located on the first side of the material (Column 2, lines 33 – 37; Figure 4, #36 and 37) with second non-adhesive tabs (Figure 4, #38 and 39) as in claims 7, 10 and 11. As shown in Figures 2 – 4, the second side of the strip of flexible material has at least a portion of adhesive material as stated in claim 14. However,

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Taylor fails to disclose the first piece of fabric being a bra strap and the second piece of fabric being a shirt.

Huang teaches a flexible string brassiere retainer (Column 1, lines 5 – 10), where a first piece of fabric is a bra strap or underwear bottom (Figure 2, #20) and the second piece of fabric is a shoulder pad of a shirt (Figure 2, #12; Figure 3, lines 12 – 17) that the flexible string brassiere retainer is attached for the purpose of confining the bra strap of a brassiere about the upper shoulder area of a person wearing the same (Column 1, lines 9 – 10) in a variety of different garments (Column 2, lines 28 – 30).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the was made to have provided first piece of fabric being a bra strap or underwear bottom and the second piece of fabric being a shoulder pad of a shirt Taylor since Taylor discloses a securing system for attaching two adjacent garments worn by a person and as shown by Huang.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the first piece of fabric being a bra strap or underwear bottom and the second piece of fabric being a shoulder pad of a shirt in order to confine the bra strap of a brassiere about the upper shoulder area of a person wearing the same in a variety of different garments as taught by Huang.

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6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Huang as applied to claims 1 – 5, 7 – 12 and 14 above, and further in view of Huyck.

Taylor, as modified with Huang discloses a fabric securing system for securing a first piece of fabric relative to bra strap for the purpose attaching two adjacent garments worn by a person to maintain proper alignment of the garments. However, Taylor fails to disclose said section of said flexible material further comprising a pad.

Huyck teaches a lingerie strap cushioning device, that attaches around the shoulder straps of a brassiere to the increase the weight distribution at the shoulders of the wearers (Column 1, lines 5 – 10), where the cushioning device folds around the strap (Column 2, lines 23 – 26) and is secured with a fastening device that selectively secures the upper portion to the lower portion (Column 2, lines 38 – 51) for the purpose of providing a cushioning effect beneath the strap while increasing the weight distribution at the shoulders of the wearers without a bulky protuberance.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the cushioning pad in Taylor in order to provide a cushioning effect beneath the strap while increasing the weight distribution at the shoulders of the wearers as taught by Huyck.

Response to Amendment

7. The Declaration under 37 CFR 1.132 filed June 10, 2005 is insufficient to overcome the rejection of claims 1 – 4, 6 – 12 and 14 based upon Taylor in view of Huang and Huyck as set forth in the last Office action because: Appendix B is dated July 21, 2004, which occurs after the date of signature (June 7, 2004) of the Declaration. The applicant has provided no nexus between the evidence presented and the claimed invention. The presented evidence has no probative value since any unexpected results, commercial success or long felt need as other inventions have been made for the same purpose has shown by the prior art. Applicants have also failed to show that the results were greater than those that would have been expected from the prior art to an unobvious extent and that the results are of a significant practical advantage.

Response to Arguments

8. Applicant's arguments filed June 10, 2005 have been fully considered but they are not persuasive.

In response to Applicant's argument that Taylor does not show the system having a channel formed by said strip of flexible material and said second piece of fabric, said bra secured with said channel, Taylor discloses a strip of material having an area that is forms a channel as it is free of adhesive material (Figure 2, #33; Figure 1 #10, 20 and 30). The bra strap would be secured in the adhesive free channel as there are two portions of adhesive on either end of the flexible strip of material.

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In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references are directed towards systems for use for securing undergarments underneath clothing through the use of different attachments.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,803,792 to Roush et al. is cited to show the state of devices made to resist slipping of bra straps while giving protection against discomfort.

U.S. Patent No. 5,539,931 to Fizer et al. is cited to show the state of devices made to resist slipping of bra straps while giving protection against discomfort.

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10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer
Examiner
Art Unit 1772

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[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

8/15/05